

SPICe Briefing

Land and Buildings Transaction Tax (Scotland) Bill – Stage 3

20 June 2013

13/39

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Stage 3 proceedings on the Land and Buildings Transactions Tax (Scotland) Bill are scheduled to take place on 25 June 2013.

This briefing summarises the main recommendations made by the Finance Committee in its stage 1 report and the Scottish Government response to these recommendations. It also summarises the key amendments passed at stage 2 and considers the areas of debate where no amendments were passed.

[SPICe briefing 13/02](#) (Hudson and Evans, 2013) provides an overview of the Bill as introduced.



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INTRODUCTION

The [Land and Buildings Transactions Tax \(Scotland\) Bill](#) (the LBTT Bill) is a Scottish Government bill introduced in the Parliament on 29 November 2012 by Cabinet Secretary for Finance, Employment and Sustainable Growth, John Swinney MSP. The LBTT Bill is the first of three related Bills that result from measures enacted in the Scotland Act 2012, providing for new tax-raising powers. If the Bill is passed, Land and Buildings Transaction Tax (LBTT) will replace the current UK stamp duty land tax (SDLT) in April 2015.

[SPICe briefing 13/02](#) (Hudson and Evans, 2013) provides more detail on the provisions in the Bill as introduced.

PARLIAMENTARY CONSIDERATION

The Finance Committee was appointed lead committee for parliamentary consideration of the Bill. Table 1 lists the key dates for parliamentary consideration of the Bill.

Table 1: Summary of Parliamentary Consideration

Bill introduced	29 November 2012
Preliminary discussion (in private)	5 December 2012
Stage 1 – general principles	
Finance Committee	23 January , 30 January , 6 February , 20 February , 27 February and 20 March 2013
Subordinate Legislation Committee	29 January and 19 February 2013
Public Audit Committee	16 January and 27 February 2013
Stage 1 report: Finance Committee	27 March 2013
Scottish Government's response to Finance Committee Stage 1 report	24 April 2013
Stage 1 debate	25 April 2013
Stage 2 – detailed consideration	
Bill [as amended at Stage 2]	posted online 7 June 2013
Supplementary Delegated Powers Memorandum	posted online 14 June 2013
Revised Explanatory Memorandum	posted online 17 June 2013
Delegated Powers and Law Reform Committee (formerly Subordinate Legislation Committee)	18 June 2013
Stage 3 – final consideration (plenary)	25 June 2013

STAGE 1 – KEY ISSUES

At stage 1, the lead committee is tasked with reporting on the Bill's general principles. During stage 1, the Committee took oral evidence over five meetings (dates noted in table above). The Committee supported the general principles of the Bill, while raising a number of issues requiring further consideration. The main issues raised through stage 1 scrutiny are considered briefly below.

BANDS AND RATES

The Committee and those giving evidence were supportive of the Scottish Government's plans to replace the "slab" structure of the current stamp duty with a "progressive" tax structure (see SB 13/02 for a description of these tax structures). The main area of concern was the uncertainty over future bands and rates in the lead up to the introduction of LBTT. Bands and rates are to be specified at a later date through a statutory instrument and there was concern that commercial deals could be adversely affected by the lack of detail on bands and rates (although witnesses did also concede that, in principle, stamp duty land tax rates could also change with very little notice). The Bill's Policy Memorandum states that: "it would be premature to set rates now for a tax that would not come into effect for over two years, particularly when the economic outlook is uncertain". The intention is that rates and bands for LBTT would be set annually, as part of the budget process.

Concern was also raised at the proposal that the setting of bands and rates would be subject to affirmative procedure on the first occasion, but that subsequent orders would be subject to negative procedure.

SUB-SALE RELIEF

The current stamp duty land tax regime has a relief known as "sub-sale" relief (also known as "transfer of rights"). This allows stamp duty land tax relief to be claimed in certain transactions involving three parties. Both HMRC and the Scottish Government consider the current sub-sale relief arrangements to be linked to significant levels of tax avoidance. The UK Government is currently considering proposals to revise the current arrangements so as to reduce the scope for avoidance. The Scottish Government's Bill proposes the removal of such relief entirely. There was extensive discussion around this proposal, with many witnesses expressing concerns over the potential impact on development proposals and the creation of a less attractive environment for investment relative to the rest of the UK. In particular, there was support for the exemption of "forward funding" arrangements, which involve commercial property deals to finance the development of new sites.

OTHER RELIEFS

Charities and Charitable Trusts

The Committee heard evidence from a number of witnesses about the proposals for the treatment of charitable bodies within the LBTT Bill. Concerns were expressed about possible additional burdens being placed on charities through the requirement for registration with the Office of the Scottish Charities Regulator (OSCR). It was suggested that the existing distinction

made in the Charities and Trustee Investment (Scotland) Act 2005 could be used to allow for those charities operating in Scotland, but not registered with the OSCR, to gain exemption from LBTT.

Zero carbon homes relief

The LBTT Bill as introduced did not include any provisions for reliefs linked to the energy efficiency of a property. The Committee discussed whether such provisions could act as a useful incentive for encouraging investment in energy efficiency improvements. On balance, the over-riding view of those giving evidence was that LBTT relief would not provide a strong incentive for such investment and that other measures would be likely to be more effective (such as council tax discounts).

Licences

The LBTT Bill as introduced proposed that licences would be liable for LBTT. The Committee heard in both written and oral evidence from several organisations who felt that there should be exemptions to this, for example for franchises within retail outlets or at airports and certain hotel management contracts.

TAX ADMINISTRATION

The forthcoming Tax Management Bill will set out the arrangements for the administration and collection of LBTT (and the proposed Landfill Tax). This framework will involve Revenue Scotland (RS) and Registers of Scotland (RoS). In evidence, some concerns were expressed about the lack of clarity over the precise roles of the two organisations. Witnesses emphasised the importance of adequate resources, and in particular effective IT systems and suitably qualified staff to provide customer support.

NON-RESIDENTIAL LEASES, COMPANIES, TRUSTS AND PARTNERSHIPS

The Bill as introduced did not include any provisions relating to non-residential leases, companies, trusts and partnerships. The Scottish Government explained that this was due to the complex nature of the existing arrangements in these areas and a desire to simplify the current system, while ensuring compatibility with Scots Law. The Scottish Government therefore decided to continue with consultation in this area and stated its intention to introduce amendments reflecting the outcome of this further consultation at Stage 2.

BLOCK GRANT ADJUSTMENT

Although the Bill does not give any indication of the block grant adjustment that will take place on the introduction of LBTT, the Committee had some discussion on the issue and sought further information from the Cabinet Secretary. The Cabinet Secretary stressed that negotiations with HM Treasury are ongoing but expressed some concerns regarding the forecasts for stamp duty land tax produced by the Office for Budget Responsibility and stated a preference for the use of actual rather than forecast data.

COMMITTEE RECOMMENDATIONS

On completion of stage 1 evidence gathering, the Committee reported its support for the Bill's general principles, while emphasising that it will aim to closely monitor the implementation and delivery of LBTT. Table 2 draws out the key recommendations made by the Committee in its stage 1 report, and the Scottish Government's response to these recommendations.

Table 2: Recommendations in Stage 1 Report and Scottish Government response

Committee recommendations	Scottish Government response
That the Scottish Government considers the likely implications of the timing of setting the bands and rates for commercial property on investment in the Scottish market.	The Scottish Government will consider the evidence provided to the Committee regarding the timing of the publication of the proposed LBTT rates and bands for both residential and commercial property transactions.
That the Scottish Government responds to the view of the Subordinate Legislation Committee that the power to set LBTT bands and rates should always be subject to the affirmative procedure.	The Cabinet Secretary for Finance, Employment and Sustainable Growth wrote to the Subordinate Legislation Committee to advise that the Government proposes to bring forward an amendment at Stage 2 of the Bill to provide that the order-making power in section 24(1) of the Bill to set bands and rates will be subject to a form of provisional affirmative procedure after the first occasion that the bands and rates are set.
That the Committee supports the removal of sub-sale relief from LBTT on the basis that any necessary amendments are brought forward at Stage 2 to ensure that forward funding or other legitimate arrangements are not subject to double taxation.	The Scottish Government is not persuaded of the case for a sub-sale relief to be introduced in the LBTT Bill. While it wishes to support the property development industry, which plays a key role in the Scottish economy, the Government also wishes to reduce as far as possible opportunities for tax avoidance. In striking this balance, the Government wants to ensure that forward funding arrangements are not subject to double taxation under LBTT, and will work with key stakeholders to achieve this objective.
That the Scottish Government considers the proposal that the distinction within Section 14 of the Charities and Trustee Investment (Scotland) Act 2005 should form the basis of the eligibility for charities relief.	The Scottish Government is actively working with OSCR and Revenue Scotland to consider the best approach to take as regards the charities relief qualifying requirements for the small number of organisations who buy (but do not occupy) property in Scotland purely as an investment and who use the profits from this investment for charitable purposes.
That the Scottish Government considers whether some categories of licence should be exempt from LBTT.	The Scottish Government has carefully considered the evidence presented to the Committee by a range of witnesses and intends to bring forward an amendment at Stage 2 that will set out which licences are within scope of the tax.
That Registers of Scotland and Revenue Scotland are asked to provide information on key milestones and deliverables, including 6-monthly progress reports.	The Scottish Government can confirm that RS and RoS will be happy to provide a 6 monthly report on progress on implementing LBTT.
That the Scottish Government provides further details on the proposed Revenue Scotland helpline.	The Scottish Government agrees that the issue of providing appropriate help and support to taxpayers is very important. RS, RoS and the Scottish Environment Protection Agency (SEPA) are working together to assess likely demand and plan for the provision of suitable and coordinated support to taxpayers, including via effective helplines. The respective organisations will draw on input from professional bodies and taxpayer representatives to ensure that their planning in this area is as well-informed as possible. RS, RoS and SEPA will be happy to describe these plans to

	the Committee once drawn up.
That sufficient time is made available at Stage 2 to allow oral evidence in relation to proposed amendments on non-residential leases, companies, trusts and partnerships.	The Scottish Government will, as far as it practically can, assist the Committee in ensuring that adequate time is available for scrutiny of the proposed amendments.
That the Scottish Government clarifies whether it will seek the agreement of the Scottish Parliament to block grant adjustments resulting from the devolution of financial powers in the Scotland Act 2012.	The block grant mechanism with regard to the devolved taxes, including Land and Buildings Transaction Tax, remains under discussion and further work by officials is under way. The Scottish Government's position on the Parliament's involvement in approving an eventual proposal for the block grant adjustment is set out in the letter from the Cabinet Secretary for Parliamentary Business and Government Strategy to the Secretary for State for Scotland on 21 March 2012. This letter noted that Scottish Ministers intended to seek the Scottish Parliament's agreement to changes to Scotland's funding arrangements, now and in the future, in order to provide democratic oversight and assurance that Scotland's interests are being properly considered. Such funding arrangements would include arrangements for the block grant adjustment.
Whether the Scottish Government considered the findings of the Mirrlees review in bringing forward a replacement tax for SDLT.	The Scottish Government considered the findings of the Mirrlees Review and notes the concerns highlighted in paragraph 104 of the Committee's report. The Scottish Government considered the possibility of not replacing SDLT in the partial Business Regulatory Impact Assessment (BRIA) which formed part of the LBTT consultation paper published on 7 June 2012. The BRIA noted that the Scottish Government would lose essential revenue that has ranged between £250m and £565m in recent years. This revenue is essential for funding public services in Scotland and so this option was rejected.

STAGE 2 – KEY AMENDMENTS

Stage 2 offers an opportunity for any member of the Parliament to propose textual amendments to a bill, although only members of the lead committee taking forward the bill can vote on any amendments that are lodged.

When the LBTT Bill was introduced, the Scottish Government stated in the Policy Memorandum that there were some areas where further consultation was required prior to the introduction of legislative proposals. These areas were: non-residential leases, companies, trusts and partnerships. The Scottish Government stated that it would introduce amendments in these areas at Stage 2 (or, in the case of non-residential leases, potentially through statutory instruments).

At Stage 2, a total of 67 amendments were lodged. Of these:

- 63 were agreed without division
- 3 were disagreed by division
- 1 was not moved

The amendments were considered over two meetings of the Finance Committee (29 May and 5 June 2013). The vast majority (62) of the amendments were lodged in the name of the Cabinet Secretary for Finance, Employment and Sustainable Growth, John Swinney.

Many of the amendments were minor technical amendments. Table 3 provides information on the more significant amendments that were agreed, in all cases without division.

Table 3: Key amendments agreed

Amendment	Discussion
4, 5, 6, 30, 32 – John Swinney	The Bill as introduced included licences within the scope of LBTT. These amendments altered the position so that licences are now exempt from LBTT, although there is provision for regulations to specify certain types of licences that would be liable for LBTT. The types of licences that will be required to pay LBTT have yet to be specified, but the Cabinet Secretary indicated that retail units in airports and shops within shops would be likely candidates.
13 – John Swinney	This amendment addressed concerns about additional burdens being placed on charities by requiring them to register with OSCR in order to be eligible for relief from LBTT. The amendment means that a body can claim charity relief if it registered as a charity with the Scottish charity regulator, or if is “a body which is ... established under the law of a relevant territory” and is “managed or controlled wholly or mainly outwith Scotland”, subject to certain conditions. Those conditions are that, where the relevant territory has a charity regulatory regime, the body is registered with the charity regulator; or, if the body is not so registered, its purposes must be exclusively charitable.
14, 15, 16, 17, 18 – John Swinney	These amendments, taken together, widen the availability of compulsory purchase order relief to local authorities. Amendment 17 ensures that the relief is available to a local authority when it exercises its compulsory purchase order powers for any of the purposes stated in section 189 of the Town and Country Planning (Scotland) Act 1997. The purposes are the “development, redevelopment or improvement” of land, or any other purpose “which it is necessary to achieve in the interests of the proper planning of an area in which

	the land is situated.” The Cabinet Secretary undertook to revisit the wording of Amendment 17 prior to Stage 3 in order to ensure that the definitions were sufficiently precise.
38, 40, 45-50, 62, 65 – John Swinney	These amendments relate to provisions for partnerships. The Scottish Government has decided to mirror the approach taken in the existing stamp duty land tax legislation because, following continued consultation, the Scottish Government has not reached a point where it is in a position to introduce revised legislation in this area. The amendments provide scope for future revision of the legislation in this area and the Scottish Government stated that it was continuing to explore options in this area. There were some concerns over this approach, given that the existing partnership provisions were considered by some witnesses to be poorly understood and excessively complex. (See also amendments 64 and 65 (not agreed) in Table 4 below).
39, 41-44, 53, 54, 55, 56-61, 63 – John Swinney	These amendments relate to the calculation of tax relating to leases, giving details of the approach to calculating the net present value of the rent payable over the length of a lease. This reflects the outcome of discussions with the non-residential leases working group that was established by the Scottish Government.
53A – Gavin Brown	This amendment was to give greater flexibility in the setting of rates relating to leases. The Scottish Government’s proposal required a nil rate and at least two other rates; this amendment altered that approach so that the requirement would be for a nil rate and at least one other rate.
66, 67 – John Swinney	These amendments altered the procedural arrangements for the setting of LBTT rates and bands. In the Bill as introduced, the first setting of rates and bands was to be subject to affirmative procedure, but subsequent settings of rates and bands were to be subject to negative procedure. Amendment 67 altered this such that subsequent settings of rates and bands would be subject to provisional affirmative procedure.

Table 4 highlights lodged amendments that were not agreed by the Committee or that were withdrawn.

Table 4: Stage 2 amendments - not agreed or withdrawn

Amendment	Discussion	Outcome
33, 34 – Malcolm Chisholm	These amendments proposed allowing for rates to vary in relation to the energy performance of a dwelling. While supporting the general intention of the amendment, the majority of the Committee felt that LBTT was not an effective tool for encouraging homeowners to undertake investment in energy efficiency measures.	33 (For 2, Against 5) 34 (For 2, Against 5)
64, 65 – Gavin Brown	Amendments 64 and 65 relate to the proposed amendments in respect of partnerships. While the Scottish Government proposed, for the moment, to replicate the existing UK legislation, these amendments proposed to reject this approach and effectively require the introduction of revised provisions in relation to partnerships prior to introduction of LBTT in April 2015 (or otherwise leave a “vacuum” with no legislation affecting partnerships).	64 (For 2, Against 4) 65 – withdrawn

STAGE 3

By 9.30am on 19 June 2013, 68 amendments had been lodged. The majority (64) of these are Scottish Government amendments and are largely technical in nature. Four amendments have been lodged by Gavin Brown. The most significant of these is amendment 9, which would require the Scottish Government to give 12 months' notice of rates and bands in respect of non-residential property transactions.



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RELATED BRIEFINGS

SB 13/02 [Land and Buildings Transaction Tax \(Scotland\) Bill](#) (2013)

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